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UNCLAS SECTION 01 OF 02 SANTO DOMINGO 006415

SIPDIS

USDOC PASS USPTO; DEPARTMENT PASS LIBRARY OF COMMERCE FOR  
COPYRIGHT OFFICE; STATE FOR EB - WILSON; WHITE HOUSE PASS  
USTR FOR MALITO, PECK, SOUDER, VARGO

E.O. 12958: N/A

TAGS: ETRD KIPR BINV DR

SUBJECT: DOMINICAN REPUBLIC FAILS TO PRODUCE REPORT ON  
BROADCAST PIRACY

- - CORRECTED COPY ADDING USDOC, USPTO, LOC/COPYRIGHT - -

¶1. Note proposed Embassy action, para 9.

¶2. The Dominican Republic missed an October 5 deadline established in a side letter to CAFTA obligating the government to report on actions it is taking to stop television broadcast piracy. When the National Office for Copyright Protection (ONDA) provided a preliminary copy of the late report to the Embassy in November, it failed to address the broadcast issue in any detail.

Background

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¶3. Dominican trade negotiations with the United States on inclusion in the Central American Free Trade Agreement (CAFTA) included a side letter on intellectual property rights enforcement that focused specifically on television broadcast piracy. The side letter contains a requirement that the Dominican Republic "take all necessary steps to halt television broadcasting piracy by licensed broadcasting stations and to provide a deterrent to future infringements."

The Dominicans promised to provide the United States with a written report describing progress in stopping television broadcasting piracy, including criminal, administrative and civil investigations and actions. The deadline for the first report was October 5, sixty days after CAFTA was signed. Despite the side letter commitments, we see no indications that the Dominicans are taking new actions to reduce television broadcast piracy.

¶4. Embassy contacted various Dominican Government agencies prior to the October 5 reporting deadline to urge the government would meet its obligation. EcoPol Counselor and Economic Officer met with the Assistant Attorney General responsible for IPR issues Pedro Feliz Montes de Oca, Undersecretary for Industry and Commerce Marcello Puello, Ministry of Foreign Affairs Undersecretary for Economic Affairs Juan Giuliani Cury, and the new Director of the National Organization for Copyright Protection (ONDA) Marino Feliz Tererro. At the beginning of October, Feliz told Econ Officer that ONDA accepted responsibility for preparing the report but since the staff was entirely new since the August 16 inauguration of the Fernandez administration, he expected not to meet the October 5 deadline. ONDA gave the Embassy an advance copy of the preliminary report on November 5, which touches only peripherally on broadcast issues. The report instead describes ONDA's organizational structure and documents raids and confiscations of pirated music compact discs and cassette tapes. As of November 5, ONDA Director Feliz had not met with any television broadcasting stations to address broadcast piracy.

¶5. On November 23, EcoPol Counselor and Economic Officer discussed illegal television piracy of programs with Jose Rafael Vargas, president of INDOTEL, the Dominican Institute of Telecommunications. EcoPol counselor later met separately with his deputy, Jose Rizek. Vargas expressed concern over the continuing problem of television broadcast piracy but said that ONDA, not INDOTEL, is the agency with the authority and the responsibility to go after illegal broadcasters. Vargas said that INDOTEL had provided resources on at least one occasion when ONDA was investigating a case of piracy.

¶6. Broadcast piracy is nothing new in the Dominican Republic but the tough new Dominican copyright legislation, Law 65-00, introduced in 2000, was designed to help stop the problem. Legal actions taken against violators under the new law have been disappointing. There are two cases that were brought before the Dominican courts in 2002 involving television channels accused of making illegal broadcasts: Telemicro and Canal del Sol. The stations continue to broadcast. In November of this year, Telemicro (channel 5) aired on late night television Lord of the Rings: The Return of the King. To our knowledge, this latest Lord of the Rings movie has not yet been released in the United States on cable television (HBO has first release rights) and Telemicro's broadcast is illegal.

¶7. The public here sees powerful local television stations as

untouchable by the authorities, an assumption reinforced by the fact that illegal broadcasts continue to be a problem. A local attorney and businessmen told economic officer of several second-hand accounts of threats and other rough treatment of government officials and private individuals working to stop illegal broadcasts. Telemicro, a Dominican station previously owned (and possibly still controlled) by Hatuey de Camps, former head of the Partido Revolucionario Dominicano (PRD), has reportedly used its political influence and threats to keep illegal programming on the air. Local press reported that the station was a major supporter of President Fernandez in the last campaign, providing free airtime for campaign advertising (a credible allegation, since renegade Hatuey de Camps openly supported Leonel Fernandez against PRD candidate Hipolito Mejia).

18. In addition to Telemicro and Canal del Sol, numerous smaller, less well-known stations probably are in violation of copyright laws. VIRUS, a new station carried by the second largest cable television provider in Santo Domingo, Aster Cable, shows many recent, poorly-dubbed Hollywood releases. The newness of the films, making them high cost, does not coincide with the fact that the station almost exclusively plays local, low-revenue advertising. Economic Officer asked ONDA to determine whether the station is illegally broadcasting movies.

19. Proposed Action: Unless otherwise instructed, Embassy will prepare a diplomatic note referring to the August 5 agreement by exchange of notes in which Dominican authorities undertook to provide the enforcement reports, noting the delay and requesting prompt submission.

Comment

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10. Even where resources are readily available that would help determine whether stations are making illegal broadcasts, neither ONDA nor other interested government agencies are using them. At least two services in Santo Domingo make complete, round-the-clock recordings of all broadcasts made by local stations. While the legal status of these services is unclear, the listings of broadcasts are for sale and would offer agencies such as ONDA ready information to help determine if a station is breaking the law. More than identification of violators is necessary. Without an aggressive plaintiff with a vested interest there appears to be little likelihood in the short term that cases against broadcast pirates will be referred for prosecution or pursued with the vigor necessary to convict offenders.

HERTELL